

THE TOWER OF FIVE GLORIES

691 vocate's fee is one dollar silver a day, but it is usual to employ two or three advocates, and cases may last several days, or be adjourned. In the latter case litigants from distant towns have to remain in Ta Li till the case comes on again, which involves further expense if the litigant has no relatives in the city. For these reasons resort to the civil courts is still regarded as the luxury, or the extravagance, of the wealthy, and does not appeal to the peasants as the obvious expedient for settling disputes.

671 In fact, the whole system of criminal and civil juris-
 • 626 prudence rests lightly upon the surface of Min Chia life, a
 sanction generally ignored, but useful in emergency, rarely
 touching the life of the ordinary individual. In spite of the
 reforms of modern times the old passive theory of govern-
 829 ment still operates in practice in such places as Ta Li. The
 642 duties of the government in former times were three; to
 626 collect taxes, to maintain order, and—a long way after the
 other two—to carry out such public works as were ab-
 solutely necessary. This theory, though no longer admitted,
 is still very much the practice; the idea that the government
 has duties of a positive kind towards the people gains way
 only slowly, and the corresponding realisation of a duty of
 the citizen to co-operate with the government makes even
 slower progress. Government is the business of officials, war
 the business of soldiers, commerce concerns merchants, and
 agriculture is all a farmer need think about; these were the
 old axioms, and in practice they still hold fast. The people
 neither expect nor desire the government to busy itself with
 their concerns; if a market is held in some out of the way
 spot in the countryside, hundreds of people with large
 quantities of merchandise and money assemble, but they do
 not expect or require the protection or presence of the
 police. A dispute over the water rights in rice lands, a
 matter vital to the villagers, is taken, not to the courts, but

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to the village elders and the arbitrators they agree to appoint. The government is not informed, nor does it wish to know what is decided.

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This indifference to and independence of the government is carried over to matters of criminal nature, where the law might be expected to take an automatic course. In practice the people rarely invoke the law except in cases of armed robbery. A bandit is not a person towards whom one needs to use any consideration; if he has a family they will probably have disowned him to avoid being held as accomplices in his crimes. Therefore with a bandit one can safely call in the forces of law and order, since no unpleasant social relations with other members of his family are likely to result from such action. But with other kinds of criminals this factor is always present. The villagers themselves prefer to deal with a thief in their own way, sometimes a very drastic way, for if a man is found to be an incorrigible petty thief, the village assembles, sometimes asks and obtains the consent of the man's family, and either drives him out or even puts him to death by drowning. Consequently between the penalties enacted for various crimes and what actually happens to a detected criminal who has committed such a crime, there is often a wide difference. This is nowhere more evident than in crimes of a sexual nature.

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Unlike their neighbours to the north, the Na Khi, who still retain a tolerance of pre-nuptial intercourse shocking to the Chinese, the Min Chia have wholly adopted the strict and uncompromising morality of the dominant culture. As has been mentioned, the seduction of a virgin, or even of an unmarried girl previously seduced by another (if such a case occurred), is not merely sin, it is a crime, which is punishable by a sentence of two or three years' imprisonment for the man concerned. The girl is not held guiltless of course, but the law takes no account of her fate, which is left to her

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626 father's discretion. In former times a father might slay an
834 unchaste daughter, just as a husband could put an adulterous wife to death; this is now expressly forbidden by law, and does not in fact seem to have been the usual fate of erring women, even when it was permitted.

The law is thus, even now, severe, but in practice such cases hardly ever come before the courts. The idea of invoking the law in a public court in matters of this intimate nature is extremely distasteful to the Min Chia, as to the Chinese. These things are family matters to be settled by and in the family itself, or with the assistance of relatives as arbitrators. For this reason it is usually impossible to hear of cases of the graver sexual offences such as incest, for such
583 things are never made public. On the other hand the abduction of girls—with their own consent—is a common event, and admitted to be so. This, of course, comes strictly within the criminal category of seducing an unmarried girl, but it is rare that the case is brought to court.

To understand why this is so needs a word of explanation. Marriage among the Min Chia is arranged by the parents, the parties themselves not being permitted as much as to see one another before the wedding ceremony, and the betrothal often takes place when both children are still almost infants. There is thus no legitimate free sexual selection, no means of legalising the love which a chance meeting may have kindled in an unbetrothed pair. The Min Chia, however, are no more rigidly bound by their own conventions than other peoples, and thus when a young man and a girl meeting and loving by chance, refuse to renounce their passion, there is only one way out. The man abducts the girl and endeavours to get her to his own home. If he succeeds, after a more or less prolonged wrangle between the parents of both parties, and the parents of those to whom the erring couple were betrothed, the marriage is at last recognised, the customary

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582 by his intended. But they can usually be consoled by some diplomatic relative who can point out that really they are well out of it, for such a girl would clearly not have made a good daughter-in-law. The youth himself has of course to settle matters with his own family. They will probably be more concerned to placate the family of the girl to whom he is betrothed, justifiably indignant at the neglect of their own daughter and anxious about her future. Sometimes the boy will have to marry both to settle matters amicably, his betrothed as first wife, his love as concubine. This may seem ideal to the parents, but is hardly a promising arrangement for future domestic peace. On the other hand the family of the abducted girl can insist that marriage does in fact take place. Cases where the girl is seduced and abandoned are so rare that I was not able to hear of one. Here, at length, the law could be invoked if necessary, and the seducer, in danger of going to gaol for two or three years, would certainly prefer marriage even if his passion was cold.

626 In practice it is never necessary to bring things to this point. The law is never invoked, and not being called upon to act, the officials take no steps, even when the facts are well known, the subject of gossip on all sides, and the offender and his would-be bride living at hand within easy reach. No one wants the law and its officers poking their noses into private business. Even the well known fact that 829 armed men were afoot, and a breach of the peace likely, does not rouse the police to action. If manslaughter were done, a reluctant government would be forced to take action, but it is fairly plain that no one expects this to happen. Thus in civil disputes, and even in criminal cases where the motive is not robbery or banditry, the government remains passive and the law is allowed to slumber. The Chinese government, whatever the theory of the reformers, is in practice still actuated by the Taoist principle of "non-

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action", preferring to leave the people to govern themselves⁶²⁶
which they do very well, and which is all they ask. ⁸²⁹

Even in cases where the crime is in no sense a family matter the action of the law is reluctant and the possibilities of ⁶⁹⁶
compromise infinite. During my residence in Ta Li a case of ⁶²⁷
robbery with some violence occurred, which illuminates the attitude to crime on the part of people and officials alike. A young man of good family and education, impelled by some romantic or neurotic impulse, committed a series of burglaries, not because he was poor and needed money, for the objects he stole were of little worth. On the last occasion he was surprised in the room of the house he was robbing, and discovered. In the struggle that followed he stabbed the householder in the leg with a small penknife, inflicting a painful but not fatal or dangerous wound. He was overpowered by others in the house and the police summoned. The case being clear, he was carried off to the magistrate's gaol and held there while preliminary enquiries were made—enquiries which dragged on from month to month. There seemed no reason why the trial should be so delayed, since the facts were hardly in dispute.

Meanwhile his relatives, related as they were to every one of influence in the town, began negotiations for a compromise. By circuitous channels, through a relative who knew a friend, who had a friend who knew the victim of the robbery and assault, a proposition was at length put forward. If the victim would agree to forgo prosecution, various men of substance would be found to guarantee the criminal's future behaviour. The officials were perfectly aware of all this and eager to promote the compromise. At last it was agreed that if the criminal could find six men to guarantee his behaviour, who would also undertake to provide him with some means of livelihood, since his reputation and his occupation were equally lost, the victim would write to the